



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2016-0138; FRL-9973-48-Region 5]

**Air Plan Approval; Illinois; Nonattainment Plans for the Lemont
and Pekin SO₂ Nonattainment Areas**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve State Implementation Plan (SIP) revisions, which Illinois submitted to EPA on March 2, 2016, and supplemented on August 8, 2016 and May 4, 2017, for attaining the 2010 1-hour sulfur dioxide (SO₂) primary national ambient air quality standard (NAAQS) for the Lemont and Pekin areas. These revisions (herein called the nonattainment plans or plans) include Illinois' attainment demonstration and other elements required under the Clean Air Act (CAA) for the two areas. In addition to an attainment demonstration, the plans address: The requirement for meeting reasonable further progress (RFP) toward attainment of the NAAQS; reasonably available control measures and reasonably available control technology (RACM/RACT); emission inventories; and contingency measures. EPA further concludes that Illinois has demonstrated that the plans' provisions provide for attainment of the 2010 1-hour primary SO₂

NAAQS in the Lemont and Pekin areas by the attainment date of October 4, 2018. EPA proposed this action on October 5, 2017 and received one public comment in response.

DATES: This final rule is effective on **[insert date 30 days after publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2016-0138. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through www.regulations.gov or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone John Summerhays, Environmental Scientist, at (312) 886-6067 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency,

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SUPPLEMENTARY INFORMATION: This supplementary information section is arranged as follows:

- I. What Action did EPA Propose and Why?
- II. What Comments did EPA Receive, and What are EPA's Responses?
- III. What Action is EPA Taking?
- IV. Incorporation by Reference.
- V. Statutory and Executive Order Reviews.

I. What Action did EPA Propose and Why?

On October 5, 2017, at 82 FR 46434, EPA proposed to approve Illinois' nonattainment plans for the Lemont and Pekin SO₂ nonattainment areas. These areas had been designated nonattainment on August 5, 2013, triggering a requirement for Illinois to submit plans to provide for attainment and to address other requirements under CAA sections 110, 172, and 192. Illinois submitted nonattainment plans for these areas on March 2, 2016, and submitted supplemental information on August 8, 2016 and May 4, 2017.

EPA's proposed rulemaking provides further background on Illinois' submittal. Within the body of this proposed rulemaking, the first section identified EPA's action designating the Lemont and Pekin areas as nonattainment, thereby

triggering a requirement for Illinois to develop nonattainment plans for the areas.

The second section of the proposal provided an extensive discussion of EPA's guidance on the requirements that SO₂ nonattainment plans must meet in order to obtain approval by EPA, including requirements to: submit an emission inventory; provide for attainment; provide for reasonable further progress (RFP); implement RACM (including RACT); implement a new source permit program; and provide contingency measures. Of particular note, the proposal discussed the circumstances under which EPA expects to find that a plan that includes emission limits with averaging times of up to 30 days adequately provides for attainment of the 1-hour NAAQS.

The third section of the proposed rulemaking discussed EPA's review of Illinois' demonstration that its plans provide for attainment in the Lemont and Pekin areas. This section discussed the use of the atmospheric dispersion model known as AERMOD, the meteorological and emissions data used in the analysis, the emission limits that Illinois relied on, and the background concentrations that Illinois used. This included a discussion of Illinois' use of a 30-day average emission limit for the Powerton Generating Station (Powerton), operated by Midwest Generation, LLC, which is located in the Pekin area. Illinois set this limit at a level of about 58 percent of the

level of the 1-hour limit that Illinois found would have provided for attainment, and which Illinois supplemented with a requirement that Powerton have less than five percent of the hours in any 30-day period exceeding the 1-hour emission limit that Illinois otherwise would have set. EPA also evaluated comments that Sierra Club submitted during the State's rulemaking process, including comments related to the proposed emission limit for Powerton. Finally, this section summarized EPA's review of Illinois' attainment demonstration, concluding that Illinois' proposed limit for Powerton, as supplemented, was comparably stringent to the 1-hour limit that would have been necessary to provide for attainment in accordance with EPA's guidance, and finding more generally that Illinois adequately demonstrated that its plans provided for attainment.

The fourth section of the proposal contained EPA's review of the rules Illinois adopted to limit the sulfur content of residual and distillate fuel oil, and EPA's conclusion that these limits were enforceable and approvable.

The fifth section of the proposal explained how Illinois' plans satisfied other nonattainment planning requirements, including requirements for a comprehensive emission inventory, RACM/RACT, an adequate new source review program, RFP, and contingency measures.

The sixth section of the proposal summarized EPA's proposed action, namely that EPA proposed to approve Illinois' plans and the emission limits in the underlying rules.

The seventh section of the proposal identified the rules that EPA was proposing to approve, and the eighth section contained EPA's review of statutory requirements and executive orders applicable to the proposed rulemaking.

II. What Comments did EPA Receive, and What are EPA's Responses?

In response to the proposed rulemaking, EPA received one comment letter, from Midwest Generation, LLC, dated November 6, 2017. The commenter indicated that it supports EPA's proposed rulemaking, provided SO₂ air quality data for the Lemont and Pekin areas from 2013 through August 2017, and commented that "because significant SO₂ emission reductions have already occurred in the designated non-attainment areas, the Illinois EPA will soon be authorized to submit a 'clean data' petition to U.S. EPA for the ambient air monitoring sites that were the basis for the non-attainment designations."

These comments, which support EPA's action, do not require any reassessment of the proposed rulemaking. Additionally, the proposed action did not address whether the Lemont and Pekin areas (at the monitoring sites and elsewhere) are currently attaining the SO₂ standard; rather, the action evaluated

Illinois' nonattainment plans for areas and proposed to find that those plans will provide for attainment. Therefore, the comments related to recent air quality monitoring data for the areas are not relevant to this rulemaking.

III. What Action is EPA Taking?

EPA is taking final action to approve Illinois' submission as a SIP revision, which the state submitted to EPA on March 2, 2016, and supplemented on August 8, 2016, and May 4, 2017, for attaining the 2010 1-hour SO₂ NAAQS for the Lemont and Pekin SO₂ nonattainment areas.

These SO₂ nonattainment plans include Illinois' attainment demonstrations for the Lemont and Pekin SO₂ nonattainment areas. These attainment demonstrations use dispersion modeling to demonstrate that the emission limits that Illinois adopted into Title 35 Part 214 of the Illinois Administrative Code and submitted for EPA approval provide for air quality meeting the SO₂ NAAQS.

These limits include a 30-day average limit for the Powerton power plant in the Pekin area. Illinois' modeling demonstrated that a 1-hour limit of 6,000 pounds of SO₂ per hour for this facility, in conjunction with the other limits that Illinois adopted and submitted or otherwise has in place, provide for attainment in this area. Illinois demonstrated that a 30-day average limit of 3,452 pounds per hour is comparably

stringent to a 1-hour limit of 6,000 pounds per hour at this facility. Therefore, and for reasons discussed in the proposed rulemaking, EPA finds that the limits submitted by Illinois, which for Powerton include a 30-day average limit of 3,452 pounds per hour supplemented by a requirement that emissions not exceed 6,000 pounds per hour for more than 5 percent of hours, provide for attainment of the 1-hour SO₂ NAAQS.

These nonattainment plans also satisfy requirements for emission inventories, RACT/RACM, RFP, and contingency measures. Additionally, Illinois has previously addressed requirements regarding nonattainment area new source review. Therefore, EPA has determined that Illinois' SO₂ nonattainment plans meet the applicable requirements of CAA sections 110, 172, and 192.

IV. Incorporation by Reference.

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Illinois Regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available through www.regulations.gov, and at the EPA Region 5 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information). Therefore, these materials have been approved by

EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.¹

V. Statutory and Executive Order Reviews.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;

¹ 62 FR 27968 (May 22, 1997).

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally

permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court

of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control,
Incorporation by reference, Intergovernmental relations,
Reporting and recordkeeping requirements, Sulfur oxides.

Dated: January 17, 2018.

Cathy Stepp,
Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. In § 52.720:

a. In the table in paragraph (c) under “Part 214: Sulfur Limitations”:

i. Revise the entries for 214.121 and 214.122 under the subheading entitled “Subpart B: New Fuel Combustion Emission Sources”.

ii. Revise the entry for 214.161 under the subheading entitled “Subpart D: Existing Liquid or Mixed Fuel Combustion Emission Sources”.

iii. Add new entries before 214.Appendix C for 214.600, 214.601, 214.602, 214.603, 214.604 and 214.605 under a new subheading entitled “Subpart AA: Requirements for Certain SO₂ Sources”.

b. In the table in paragraph (e) add a new entry in alphabetical order for “Sulfur dioxide (2010) nonattainment plans” under the subheading entitled “Attainment and Maintenance Plans”.

The additions and revisions read as follows:

§ 52.720 Identification of plan.

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(c) * * *

EPA--APPROVED ILLINOIS REGULATIONS AND STATUTES

Illinois citation	Title/subject	State effective date	EPA approval date	Comments
* * * * *				
Subpart B: New Fuel Combustion Emission Sources				
214.121	Large Sources	12/7/2015	[insert date of publication in the Federal Register], [Insert Federal Register citation]	
214.122	Small Sources	12/7/2015	[insert date of publication in the Federal Register], [Insert Federal Register citation]	
* * * * *				
Subpart D: Existing Liquid or Mixed Fuel Combustion Emission Sources				
214.161	Liquid Fuel Burned Exclusively	12/7/2015	[insert date of publication in the Federal Register], [Insert Federal Register citation]	
* * * * *				
Subpart AA: Requirements for Certain SO₂ Sources				
214.600	Definitions	12/7/2015	[insert date of publication in the Federal Register], [Insert Federal Register citation]	
214.601	Applicability	12/7/2015	[insert date of publication in the Federal Register], [Insert Federal Register citation]	
214.602	Compliance Deadline	12/7/2015	[insert date of publication in the Federal Register], [Insert Federal Register citation]	
214.603	Emission Limitations	12/7/2015	[insert date of publication in the Federal Register], [Insert Federal Register citation]	
214.604	Monitoring and Testing	12/7/2015	[insert date of publication in the Federal Register], [Insert Federal	

			Register citation]	
214.605	Recordkeeping and Reporting	12/7/2015	[insert date of publication in the Federal Register], [Insert Federal Register citation]	
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(e) * *

EPA-APPROVED ILLINOIS NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
*	*	*	*	*
Attainment and Maintenance Plans				
*	*	*	*	*
Sulfur dioxide (2010) nonattainment plans	Lemont and Pekin	3/2/2016	[insert date of publication in the Federal Register], [Insert Federal Register citation]	
*	*	*	*	*

[FR Doc. 2018-01925 Filed: 1/31/2018 8:45 am; Publication Date: 2/1/2018]